Summary of Interested Parties Meeting
Regulation §17052.6, Child and Dependent Care Expenses Credit

I. **Administration**: On May 31, 2011 at 1:00 p.m., members of the public attended an interested parties meeting at the Franchise Tax Board central office in Sacramento. Parties attended in person and by telephone. Those physically present were asked to register at the entrance and phone participants introduced themselves. The session was audio recorded for reference but there will be no attribution of comments and no transcript.

The hearing officer, Lisa Lawson, listed the available handout document: the notice of the meeting which included a list of discussion topics. Parties were told they had until July 1, 2011 to submit written comments and that a summary of the interested parties meeting and any written comments would be posted online. The hearing officer explained that the purpose of the meeting was to provide the public with an opportunity to discuss and provide comments on the proposed regulation section 17052.6 which seeks to provide clarification for the taxpayer on the documents that can be used to establish the identity of the qualifying individual, care provider, and amount paid for qualifying expenses.

II. **Discussion:** The comments are not necessarily replicated in the order spoken but rather are grouped topically. The numbering of the comments is for ease of reference and thus readers should not assign any importance to one comment over any other comment. Public questions/comments have been italicized.

A. Provider Identity Documentation.

1. *What does the Franchise Tax Board currently require taxpayers to provide to identify their care provider?*

   Taxpayers are required to complete FTB Form 3506 if they are claiming the credit when they complete their tax return. This form requires the taxpayer to provide the provider's name, address, telephone number, and taxpayer identification number.

   If the taxpayer's claim for the Child and Dependent Care Expenses Credit is examined, the taxpayer is required to submit a government issued identity card and social security card to identify their provider.

2. *If a provider does not have a social security number, but is identified by an individual taxpayer identification number (ITIN) on the FTB Form 3506, will the Franchise Tax Board disallow the taxpayer's credit?*

   No, it is not our practice to disallow because the provider only has an ITIN. The ITIN is made to be used for tax purposes so it will suffice here.

3. Suggestions/Comments:

    a. *Taxpayers face obstacles when gathering information from their provider. Franchise Tax Board should provide a uniform document that taxpayers can use to gather the necessary information from their provider. Taxpayers are used to having to provide forms when they complete their tax returns, so providing taxpayers with a form that they can use for identifying their provider would be appropriate and helpful.*

    b. *At the practitioner level, the problem is the underground economy of the providers. A subset of taxpayers will not be able to obtain information from their provider because their provider does not want to claim the income so they don't want to hand out any proof. This is where the problem mainly lies, there doesn't seem to be a systemic problem of people not being able to produce sufficient documentation during an audit.*

B. <u>Child/Dependent Identity Documentation.</u>

1. *What does the Franchise Tax Board currently require taxpayers to provide to identify their child or dependent?*

Taxpayers are required to provide the child or dependent's name and social security number on FTB Form 3506 when they complete their tax return.

If the taxpayer's claim for the Child and Dependent Care Expenses Credit is examined, the taxpayer is required to submit a birth certificate and social security card to identify their child or dependent.

C. <u>Proof of Payment Documentation.</u>

1. *What does the Franchise Tax Board currently require taxpayers to provide to prove the amounts that they paid their care provider?*

Taxpayers are asked to provide copies of cancelled checks/money orders, receipts, or invoices which indicate the amounts that the taxpayer paid to their provider for child or dependent care. If the taxpayer is unable to produce these documents, the taxpayer is asked to submit a statement signed under penalty of perjury by their care provider which indicates the amounts that the taxpayer paid the provider for their care services. The Franchise Tax Board intends to include references to acceptable documentation in the regulation and any examples from the public in this regard would be welcome.

D. <u>General Questions/Comments.</u>

a. *Is the need for regulations diminished by the fact that, for tax years beginning on or after January 1, 2011, the Child and Dependent Care Expenses Credit has been made a nonrefundable credit by SB 86?*

   The Franchise Tax Board believes that given the fact that the requirements of the law remain the same even in light of the credit's new status as nonrefundable, taxpayers will still benefit from having information available to assist them in proving entitlement to the credit at the time the services are provided or at the time the return is filed.

b. *Has the Franchise Tax Board looked at what taxpayers have tried to produce to show entitlement to the credit to see what challenges taxpayers are facing when producing documentation?*

   The Franchise Tax Board looks at each case on the whole of its facts and circumstances and tries to be as accommodating as possible under the law. The Franchise Tax Board's goal is to provide sufficient information to taxpayers such that they are able to prepare in advance for the possibility of being required to show entitlement to the credit. Ultimately, the Franchise Tax Board wants all entitled taxpayers to receive the credit.

III. Written Comments Received by January 1, 2012.

Franchise Tax Board has not received any written comments.

An additional Interested Parties Meeting will be held after draft language has been developed so that the public may have an opportunity to comment on the proposed language of the new regulation.